DOCUMENT RESUME

ED 282 152 CG 019 919

AUTHOR Malouff, John; Schutte, Nicola
TITLE Shaping Juror Attitudes: Effects of Requesting Different Damage Amounts in Personal Injury Trials.
PUB DATE Apr 87
NOTE 24p.; Paper presented at the Annual Meeting of the Western Psychological Association (67th, Long Beach, CA, April 23-26, 1987).
PUB TYPE Reports - Research/Technical (143) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Attitude Change; College Students; *Court Litigation; *Decision Making; *Financial Needs; Higher Education; Legal Responsibility; *Motivation Techniques; *Persuasive Discourse
IDENTIFIERS *Juries; *Personal Injury Trials

ABSTRACT

In almost every personal injury trial the injured person's attorney has to decide how much to ask the jury to award in damages. A line of research regarding attitude change in other settings indicates that the more extreme the persuading message is, the more attitude change occurs. This suggests that the more money requested in damages, the more a jury will award. An analogue experiment of juror behavior was used to examine the effect of amount of damages requested on amount awarded. College student subjects (N=158) read two detailed case summaries of real personal injury cases, with each summary containing one of four amounts requested for damages by the injured person's attorney. The results showed a significant effect of amount requested on amount awarded. The more money requested for damages by the plaintiff's attorney, the more the subjects awarded. The effect was consistent across cases and across injured persons of different sexes and ethnic groups. (Author/NB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED282152

Shaping Juror Attitudes: Effects of Requesting Different Damage Amounts in Personal Injury Trials

by

John Malouff and Nicola Schutte

University of Southern Colorado

Requests for reprints and copies of research materials may be sent to John Malouff, Psychology Department, University of Southern Colorado, Pueblo, CO 81001

Running head: Personal Injury Trials

CG019919

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

This document has been reproduced as received from the person or organization originating it.

Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Nicola Schutte

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

BEST COPY AVAILABLE

Abstract

In almost every personal injury trial the injured person's attorney has to decide how much to ask the jury to award in damages. A line of research regarding attitude change in other settings indicates that the more extreme the persuading message is, the more attitude change occurs. This suggests that the more money requested in damages, the more a jury will award. In an analogue experiment of juror behavior, the authors examined the effect of amount of damages requested on amount awarded. One hundred and fifty-eight college student subjects read two detailed case summaries of real personal injury cases, with each summary containing one of four amounts requested for damages by the injured person's attorney. The results showed a significant effect of amount requested on amount awarded. The effect was consistent across cases and across injured persons of different sexes and ethnic groups.

Shaping Juror Attitudes: Effects of Requesting Different Damage Amounts in Personal Injury Trials

In personal injury trials juries typically award damages for pain and suffering, loss of enjoyment of life and wage loss. In almost every personal injury trial the injured person's attorney has to decide how much to ask the jury to award in damages. At present, attorneys must choose a total amount to request based on personal experience and conjecture, as there appear to be no published studies of what effect, if any, the amount requested has on the amount awarded.

However, there is a line of research in non-jury settings that indicates that the more extreme a persuading message is, the more attitude change occurs. There is evidence in this line of research that as the message becomes extreme, the effect fades out so that no additional increase in attitude change occurs with increasingly more extreme arguments. At quite extreme levels of discrepancy, a boomerang effect sometimes occurs in which more extreme arguments lead to less attitude change than less extreme arguments (McGuire, 1976).

This line of research has been characterized as indicating that for maximum persuasion a message should be more than minimally different from the original attitude of the message receiver but not so different as

to lead the receiver to reject the source of the message (Sherif & Hovland, 1961). However, it is unclear whether the findings of the attitude-discrepancy research apply to any specific situation (Eagly & Himmelfarb, 1978), such as requesting damages in personal injury trials, and what the optimal amount of discrepancy would be.

If the above mentioned line of research were extended to requests for damages in personal injury trials, similar results would indicate that attorneys should ask for a relatively large amount but avoid very extreme requests. Interestingly, the same advice is given by some experienced attorneys (e. g. DeMay, 1977, p. 233).

We therefore set out to examine empirically the relationship between the amount requested for damages and the amount awarded. We hypothesized (a) that at least at some levels of amount requested there is the simplest possible relationship between amount requested and amount awarded, namely that the more requested by the attorney for the injured person (plaintiff), the more a juror would award, and (b) that this relationship would be found regardless of the specific facts of a case, including the injuries sustained and the gender and ethnic group of the plaintiff. Gender and ethnic group were examined because of evidence of gender differences in actual trial awards (Nagel & Weitzman, 1972) and because of the possibility of ethnic bias also.

In order to obtain the necessary control over the relevant variables, we simulated in a simplified way the crucial aspects of two trials.

Method

Subjects

The 158 subjects were college students taking psychology courses who volunteered to participate in the experiment. There were 81 males and 77 females, with a mean age of 22.19, SD = 7.03. The subjects included 34 hispanics, 105 nonhispanic whites, 6 blacks, 3 orientals and 10 individuals who did not state their ethnic group.

Materials

The primary materials were detailed summaries, written by the authors, of two real personal injury cases. The summary of one case, involving a leg injury, was 330 words long; the summary of the other case, involving temporomandibular (TMJ) and shoulder injuries, was 470 words long. The leg case summary stated that the liability of the defendant had already been found by the court. The TMJ case summary stated that the defendant had admitted liability. Both summaries stated that the sole issue to be decided by the juror was the amount of damages to be awarded. In that way the complexities of determining liability were eliminated in a realistic way.

Both summaries gave detailed descriptions of the chronic pain and disablity being experienced by the plaintiff and of the treatment received, through the testimony of the plaintiff and health care providers. The leg case involved a serious, permanent leg injury; the TMJ case involved serious, permanent TMJ and shoulder injuries and permanent wage loss.

In the summaries the plaintiff's attorney asked for damages in a specific amount, and the defense attorney suggested that the jurors award $50,000 in damages in the leg injury case and $150,000 in the TMJ case. The judge then gave a typical pattern instruction directing the juror to award damages on the basis of the evidence.

In the leg injury case, the amount of damages requested by the plaintiff's attorney was $100,000, $300,000, $500,000 or $700,000. For the TMJ case, the amount requested by the plaintiff's attorney was $200,000, $400,000, $600,000 or $800,000.

The lowest amount requested by the plaintiff's g attorney for each injury was selected by the researchers to be at about the mean of the few reported actual jury verdicts in real cases of similar injuries, as indicated in Harley and Magee (1985). The lowest amounts were increased by increments of $200,000, roughly the amount of the base levels, to establish the higher amounts to be used.

Pilot data were collected from nine male and seven females college students (mean age = 21.33; SD = 1.76)

who indicated how much they would award in damages in each of the two cases. For the purposes of the pilot study, the summaries did not include any request by the plaintiff's attorney for a specific amount of damages. The mean awards were $167,812, SD = $20,920, for the leg injury case, and $276,687, SD = $244,619, for the TMJ injury case. These pilot findings were similar to the actual jury awards mentioned by Harley and Magee (1986) and thus confirmed the reasonableness of the figures selected for lower levels of amounts requested for damages in the experiment.

Procedure

For each case, 16 versions were created, crossing four levels of amount requested with two possible sexes for the plaintiff and two ethnic group possibilities (hispanic versus white nonhispanic). The 16 versions of the leg case were combined in counterbalanced fashion with the 16 versions of the TMJ case. The case summaries were randomly assigned to either first or second position in each two-case set, and a single set was given to each subject.

Results

A 4 (levels of amount requested) X 2 (gender of plaintiff) X 2 (hispanic versus nonhispanic plaintiff) ANOVA was done for each case. The ANOVA for the leg injury case showed only one significant interaction or

main effect: The amount requested had a significant effect on the amount awarded, $F(3, 139) = 24.86$, $p < .001$. Table I shows the means of amount awarded for the different amounts requested.

Insert Table I about here

The relationship was essentially linear, as Figure 1 shows graphically. A linear regression analysis using the amount requested as a predictor showed that 33% of the variance of the amount awarded was explained by the amount requested.

Figure 1 should go about here

The ANOVA for the TMJ case showed three significant effects. One was a significant triple interaction, $F(3, 142) = 4.66$, $P < .004$, in which female hispanic plaintiffs were awarded less in damages as they requested the highest amount, in distincion to their overall pattern of receiving more if they asked for more. There was also a significant main effect of the sex of the plaintiff in which female plaintiffs were awarded less than males.

Finally, there was a significant main effect of amount requested, $F (3, 142) = 21.63$, $p < .001$, in which plaintiffs generally were awarded more if they asked for

more. A linear regression analysis using the amount requested as a predictor showed that 28% of the variance of the amount awarded was explained by the amount requested.

Table II shows the means of the amounts awarded by the different amounts requested. Figure 1 shows the data graphically.

Table II should go about here

Because of the finding of a gender effect and a triple interaction regarding the TMJ injury case, we looked at the leg injury case data for similar trends. There was none.

Discussion

The primary finding of the present experiment was that the more money requested for damages by the plaintiff's attorney, the more the jurors awarded. This effect was consistent across cases and across plaintiffs of different sexes and ethnic groups. The effect was essentially linear, except that with regard to the TMJ injury case for the female hispanic plaintiffs, there was a boomerang effect as the plaintiff's attorney requested the highest amount of damages of the four amounts examined.

The unhypothesized finding of a boomerang effect is tantalizingly in line with some prior research on

attitude change (McGuire, 1976). However, because the effect found with regard to only one of the cases and then only with regard to a narrow group of subjects, little faith should be put in the finding.

The same may be said regarding the unhypothesized finding that female plaintiffs were generally awarded less in damages than male plaintiffs in the TMJ case. This finding fits well with findings that actual juries tend to award less to females (Nagel & Weitzman, 1972), but little faith can be put in the finding in light of the lack of even a similar trend in the leg injury case.

The main issue relating to interpretation of the findings of the experiment is how far can one go in generalizing the primary finding that the more damages requested, the more awarded. Several methodological aspects of the experiment must be considered in this regard.

First, there is the fact that the subjects were college students, who were likely younger overall than real jurors. These subjects may reach decisions in a different fashion from nonstudents. However, it is noteworthy that in many or perhaps all states most college students are eligible for jury duty. Hence, the students were members of the actual population of interest. Further, there is no empirical basis for expecting them to reach decisions in a manner different from nonstudents.

Second, there is the fact that the experiment was a simulation. It may be that the real consequences of jury decisions would eliminate the effect found, but there do not appear to be any convincing reasons why this would be so.

Third, the simulation involved summaries rather than lengthy real testimony with the typical delays involved in objections and rulings. It is possible that the amount of damages requested by the attorneys would be less significant in such circumstances than in the simulation if only because so much additional information is presented to the jurors in actual trials. Hence, one might expect the effect of amount requested to be less strong in a real trial than in the simulation, in which the amount requested explained 33% and 28% of the variance of the amount awarded in the two cases. However, there does not appear to be any compelling reason to believe that the effect would disappear completely.

Fourth, there is the fact that the simulation used individual subjects as the unit of analysis rather than juries. A possibility exists that the decision making of juries somehow eliminates the effect found with individual jurors.

The few studies published about the decision making of actual juries do not provide any evidence for or against that possibility. One would expect though that the decisions of juries would be highly correlated

with individual views, and there is some evidence that this is the case. Kalven and Zeisel (1966, p. 64) found in actual personal injury trials that the verdict individual trial judges would have reached agreed with actual jury verdicts 78% of the time. They concluded on the basis of these findings and on the basis of juror interviews about pre-deliberation views that "to a substantial degree the jury verdict is determined by the posture of the vote at the start of the deliberation process and not by the impact of the process as rational persuasion" (p. 496).

With the methodological limitations of the present experiment in mind, one might most reasonably conclude that the finding of a hypothesized linear relationship between amount of damages requested and amount awarded is suggestive with regard to actual juries and tends to confirm prior findings in attitude-discepancy research dealing with other attitudes.

Although the best possible way of examining the finding further would be to study actual juries in real trials with carefully controlled manipulations regarding amount requested, such is impossible as a practical matter. A practical approach would involve adding one methodological improvement at a time in examining the relationship.

A sensible first improvement would be to use videotapes of cases rather than written summaries. If

the effect still appears, further refinements of the method can be made in subsequent studies. Eventually, attorneys may have empirical evidence on the issue solid enough to aid them in deciding how much to ask a jury to award for damages in a given case.

References

DeMay, J. (1977). The plaintiff's personal injury case: its preparation, trial and settlement. Englewood Cliffs, NJ: Prentice-Hall.

Eagly, A., & Himmelfarb, S. (1978). Attitudes and opinions. In M. Rosenzweig & L. Porter (Eds.), Annual review of psychology (Vol. 29). Palo Alto: Annual Reviews, Inc.

Harley, R., & Magee, M (1985). What's it worth? A guide to current personal injury awards and settlements. New York: Kluwer.

Kalven, H., & Zeisel, H. (1966). The American jury. Boston: Little, Brown.

McGuire, W. (1969). The nature of attitudes and attitude change. In G. Lindsey & E. Aronson (Eds.), Handbook of social psychology (Vol. 3). Reading, MA: Addison-Wesley.

Nagel, S., & Weitzman, L. (1972). Double standard of American justice. Trans-Action, 9, 18-25, 62-63.

Sherif, M., & Hovland, S. (1961). Social judgment. New Haven: Yale University Press.

Table I

Means and Standard Deviations of Damages Awarded by Amount Requested in Leg Injury Case

	Amount Awarded[a]		
	M	SD	N
Amount Requested[a]			
100,000	90,333	33,476	39
300,000	188,462	99,480	39
500,000	282,868	227,263	38
700,000	421,538	247,059	39

[a]Amounts are in dollars

Table II

Means and Standard Deviations of Damages Awarded by Amount Requested, by Plaintiff's Sex and by Plaintiff's Ethnic Group in TMJ Injury Case

	Amount Awarded[a]		
	M	SD	N
Amount Requested[a]			
200,000			
M-H	238,000	163,626	10
M-W	200,000	62,361	10
F-H	176,000	23,781	10
F-W	177,500	47,799	10
400,000			
M-H	316,667	119,896	9
M-W	292,500	104,117	10
F-H	290,000	110,050	10
F-W	263,636	71,031	11
600,000			
M-H	400,000	176,383	10
M-W	517,900	237,626	10
F-H	510,000	152,388	10
F-W	309,700	131,558	10

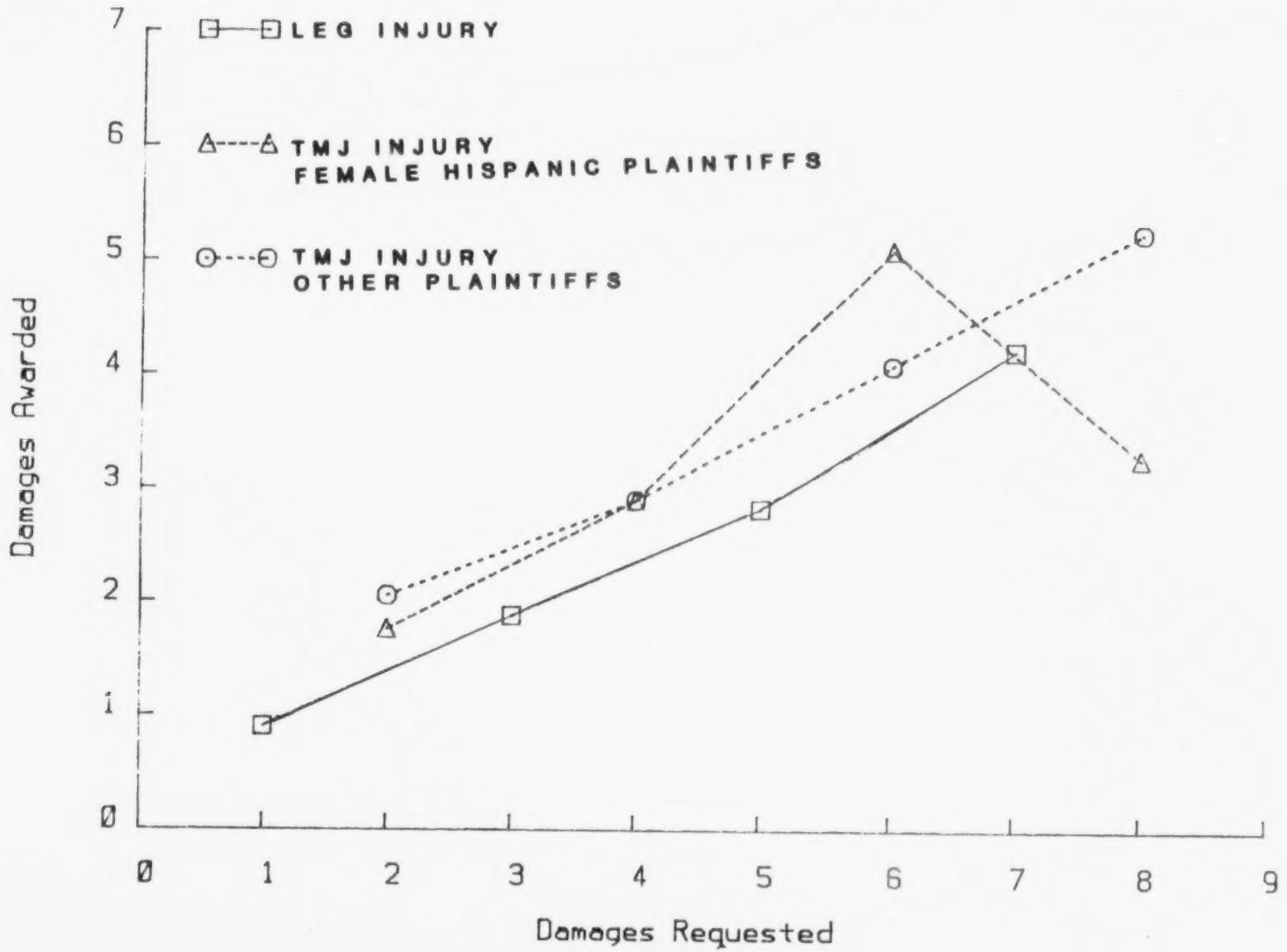
800,000			
M-H	576,900	306,914	10
M-W	488,889	261,937	9
F-H	327,778	253,859	9
F-W	510,000	263,321	10

Note: M = male; F = female; H = hispanic;
W = white nonhispanic

[a] Amounts are in dollars

Figure Caption

Figure 1. Means of amount of damages awarded by amount requested for all plaintiffs in leg injury case and for female hispanic plaintiffs and for other plaintiffs in TMJ injury case.


LEG INJURY
TMJ INJURY
FEMALE HISPANIC PLAINTIFFS
TMJ INJURY
OTHER PLAINTIFFS
Damages Awarded
Damages Requested
0
1
2
3
4
5
6
7
8
9

Overview 1241

This is the case of Irene Marquez, a 76-year-old hispanic female who was injured in a fall.

Your Role

At the beginning of the trial the judge tells you (a) that the plaintiff, Irene Marquez, is suing the defendant, Northside Buick, Inc., for damages, (b) that the defendant has admitted that the defendant negligently created a dangerous condition on its property that caused the plaintiff, Irene Marquez, to fall and suffer injuries and (c) that you are to decide how much money the plaintiff will be awarded as damages.

The Evidence

At the trial you are presented with the following evidence regarding Irene Marquez's damages, from two witnesses, Irene's physician and Irene:

1. Irene Marquez's treating physician testifies (a) that he has treated Irene for two years since the time of the accident, (b) that the accident caused severe damage to the upper part of Irene's right leg bone that connects to the hip, (c) that he operated on the leg, removed the top part of the leg bone and replaced it with an artifical bone, (d) that the injury and the surgery were quite painful, (e) that even with the surgery, Irene will never be able to walk without pain, (f) that to walk safely, Irene must use an walker, which is an aluminum object with four legs, and (g) that Irene should never walk over 60 feet at one time and should never try to walk over rough terrain.

2. Irene testifies (a) that before the accident she was in good health, (b) that she experienced constant severe pain for four months after the accident, (c) that her right leg always hurts when she walks and often hurts even when she is inactive, (d) that prior to the accident she had retired, and (e) that because of the injuries she suffered, she has been and remains unable to do many of her favorite activities, including going for walks, playing games with her great-grandchildren, and taking care of the yard.

Closing Argument of Attorneys

After all the evidence is presented, Irene's attorney argues that the jury should award Irene $100,000 in damages for past and future pain, suffering and loss of enjoyment of life.

The defendant's attorney argues that only $50,000 should be awarded for past and future pain, suffering and loss of enjoyment of life.

Instructions by the Judge

The Judge then instructs you to decide how much to award the plaintiff for damages and to base your decision on the evidence.

How much money would you award for damages? _____

Overview 2244

This is the case of Lucille Lucero, a 56-year-old Hispanic female who was injured in an automobile accident.

Your Role

At the beginning of the trial the judge tells you (a) that the plaintiff, Lucille Lucero, is suing the defendant, Dan Johnson, for damages, (b) that the Judge has decided that the defendant negligently caused an automobile accident in which the plaintiff, Lucille Lucero, was injured, and (c) that you are to decide how much money the plaintiff will be awarded as damages.

The Evidence

At the trial you are presented with the following evidence regarding Lucille Lucero's damages, from four witnesses, including her physician, her dentist, her psychologist and herself:

1. Lucille Lucero's treating physician testifies (a) that he has treated Lucille for four years since the time of the accident, (b) that the accident caused permanent muscle and ligament damage to both of Lucille's shoulders and also to her neck, all as confirmed by X-rays, (c) that he has operated once on each shoulder with some immediate increase in pain and then an overall decrease, (d) that Lucille's condition will not improve any more, and (e) that because of the injuries Lucille will always experience constant pain in her shoulders and neck even with pain-reducing medications and will never be able to work again for a living.

2. Lucille's treating dentist testifies (a) that he has treated Lucille for four years for injuries to both jaw joints caused by the accident, (b) that the accident caused permanent damage to both jaw joints, as confirmed by X-rays, (c) that he operated on both jaw joints at different times, leading to an immediate increase in pain followed by a decrease, and (d) that Lucille will always experience constant mild pain in both jaw joints, with occasional severe pain.

3. Lucille's psychologist testifies (a) that as a result of the pain and inability to work caused by the accident, Lucille has suffered depression for the past four years and (b) that it is unlikely that Lucille will ever stop being depressed.

4. Lucille testifies (a) that since the accident she has had constant pain in her shoulders, neck and both sides of her head, (b) that she has felt worthless and depressed since the accident, (c) that she has been physically unable to work in the four years since the accident because of her injuries, (d) that she has been physically unable to do many of her favorite activities since the

accident, including taking long walks, dancing and bowling. and (c) that before the accident she was making $7,000 per year as a janitor.

Closing Arguments of Attorneys

After all the evidence is presented, Lucille's attorney argues that the jury should award Lucille $100,000 in damages for past and future loss of wages and $300,000 more for past and future pain, suffering and loss of enjoyment of life, for a total of $400,000.

The defendant's attorney agrees that Lucille should be awarded $100,000 for past and future wage loss but argues that only $50,000 more should be awarded for past and future pain, suffering and loss of enjoyment of life, for a total of $150,000.

Instructions by the Judge

The Judge then instructs you to decide how much to award the plaintiff for damages and to base your decision on the evidence.

How much money would you award for damages? _____